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PATENTS

UNITED STATES PATENT AND TRADEMARK OFFICE

Application: 09/315,962

Examiner: Lee, Michael

Filed: 05/21/1999

Art Unit: 2614

Inventor: McCall et al.

Atty Ref.: 0103079/0522681

Title: Method and Apparatus for Simultaneous Capture of a Simultaneous Image

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JUL 16 2004

DIRECTOR OFFICE

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PETITION TO WITHDRAW HOLDING OF ABANDONMENT
UNDER 37 CFR 1.181

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JUN 24 2004

AND IN THE ALTERNATIVE,

OFFICE OF PETITIONS

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

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JUL 02 2004

MAIL STOP PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
ATTN: John Gillon

Technology Center 2600

Sir:

This paper is being filed for the above-referenced application as a petition to withdraw holding of abandonment pursuant to 37 CFR 1.181. In the alternative, the Applicants petition for revival of an application for patent abandoned unintentionally under 37 CFR 1.137(b).

1. PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37
CFR 1.181.

Applicants petition the Commissioner to withdraw the holding of abandonment of the above-referenced application. An official Notice of Abandonment was mailed from the PTO on 04/21/2004.

This abandonment is a result of the Applicants' failure to file a response to the Office communication mailed on 07/30/2003. However, Applicants never received the

Office communication alerting them to the filing deadlines, so a response could not have been filed before the deadline had lapsed.

Applicants first became aware of the underlying circumstances during a telephone call with Examiner Michael Lee. The undersigned contacted Mr. Lee on 03/25/2004, to inquire as to the status of the present application. Mr. Lee informed the undersigned that an Office communication had been mailed on 07/30/2003, and on the same day Mr. Lee e-mailed an informal copy of the communication. However, a notice of abandonment had not yet been issued. On 03/29/2004, the undersigned called John Gillon, an attorney in the Office of Petitions, to inquire on the best way to proceed, and Mr. Gillon recommended waiting for the case to be abandoned and then file the present petition. Subsequently, this office received the Notice of Abandonment on 04/29/2004.

While immaterial to the facts underlying this petition, in the interest of full disclosure please note that the undersigned changed law firms on February 10, 2003. The undersigned had previously practiced at Graydon, Head & Ritchey, LLC and is now practicing at Frost Brown Todd, LLC. The responsibility for the present application was transferred with the undersigned, however, such transfer had no bearing on the failure to receive the Office communication. Indeed, neither law firm received the Office communication.

Pursuant to MPEP 711.03(c)(II) and under the reasoning of *Delgar Inc. v. Schuyler*, 172 USPQ 513 (D.D.C., 1972), an allegation that an Office communication was never received may be considered in a petition to withdraw the holding of abandonment. Similar to the present situation, *Delgar* dealt with a situation where applicant's representative did not receive the original Notice of Allowance and the application is held abandoned for failure to timely pay the issue fee. If such a petition is adequately supported with accompanying documentation, the Office may grant the petition to withdraw the holding of abandonment and re-mail the Office communication to the Applicants.

Accordingly, documentation in support of Applicant's Petition to Withdraw the Holding of Abandonment includes the following:

i) Statement from the undersigned, a practitioner at Frost Brown Todd, LLC, stating that the Office communication of 07/30/2003 was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received;

ii) A copy of the Frost Brown Todd docket record where the nonreceived Office communication would have been entered had it been received.

iii) Statement from John Colbert, a practitioner at Graydon, Head & Ritchey, stating that the Office communication of 07/30/2003 was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received;

iv) A copy of the Graydon, Head & Ritchey docket record where the nonreceived Office communication would have been entered had it been received.

Thus, since neither the Applicants nor their attorneys had ever received the Office communication of 07/30/2003, it is respectfully requested that, pursuant to 37 CFR 1.181, the Commissioner withdraw the holding of abandonment of the above-referenced application and remail the Office communication.

2. PETITION FOR REVIVAL OF AN APPLICATION FOR A PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

In the alternative, if the Commissioner does not accept Applicants' Petition to Withdraw the Holding of Abandonment for the above-cited application, Applicants submit a Petition for Revival of an Application Abandoned Unintentionally, under 37 CFR 1.137(b), along with the following:

(1) Required Reply:

A copy of an Amendment and Response responsive to the Office communication of 07/30/2003 is attached.

(2) Petition Fee:

The Commissioner is hereby authorized to charge payment of the petition fee to Deposit Account No. 06-2226.

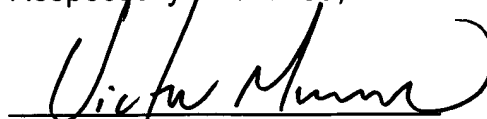
(3) Statement:

The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

(4) Terminal Disclaimer:

Since this nonprovisional utility application was filed after June 8, 1995, a terminal disclaimer is not required.

Respectfully Submitted,



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The undersigned certifies that this correspondence was deposited with the U.S. Postal Service with sufficient postage as first class mail and addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450" on June 18, 2004.

